

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BODY RECOVERY CLINIC LLC, a Washington Limited Liability Company, and class of similarly situated Washington health care providers,

Plaintiff,

V.

CONCENTRA INC. (d/b/a CONCENTRA INTEGRATED SERVICES, INC.), a foreign corporation, and its wholly owned division, AUTO INJURY SOLUTIONS, INC., a foreign corporation,

Defendants.

NO.

NOTICE OF REMOVAL BY
DEFENDANTS CONCENTRA INC., AND
AUTO INJURY SOLUTIONS, INC.
BASED ON FEDERAL DIVERSITY
JURISDICTION

CONCENTRA INC. (d/b/a CONCENTRA INTEGRATED SERVICES, INC.), a foreign corporation, and its wholly owned division, AUTO INJURY SOLUTIONS, INC., a foreign corporation,

Defendants.

PLEASE TAKE NOTICE that defendants Concentra Inc. (“Concentra”), and Auto Injury Solutions, Inc. (“Auto Injury Solutions”) hereby remove this action, Case No. 13-2-25923-1 SEA, from the Superior Court of the State of Washington for King County to the United States District Court for the Western District of Washington, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446¹. In support of this Notice of Removal, Concentra and Auto Injury Solutions state as follows:

¹ Concentra and Auto Injury Solutions expressly preserve all defenses, arguments, and objections pursuant to Federal Rule of Civil Procedure 12 or otherwise, including without limitation any objections they may have as to improper service, jurisdiction or venue or any other defenses or objections to this action. Concentra and Auto Injury Solutions further intend no admission of fact, law or liability by this Notice, and fully reserve all defenses,

NOTICE OF REMOVAL BY DEFENDANTS CONCENTRA INC.
AND AUTO INJURY SOLUTIONS, INC. BASED ON FEDERAL
DIVERSITY JURISDICTION - 1

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PROCEDURAL BACKGROUND

1. Plaintiff Body Recovery Clinic LLC (“Body Recovery Clinic”) filed a Complaint in the King County Superior Court on July 12, 2013. The Complaint purports to assert a class action against defendants Concentra and Auto Injury Solutions alleging state law claims of “Violation of Washington Consumer Protection Act,” “Civil Conspiracy with Washington Automobile Insurers” and “Unjust Enrichment”.

2. Plaintiff served the Summons and Complaint on Auto Injury Solutions via service upon its Washington registered agent on July 12, 2013.

3. Plaintiff has not served the Summons and Complaint on Concentra, Inc. Plaintiff did serve the Summons and Complaint on the Washington registered agent of Concentra Integrated Services, Inc., on July 12, 2013; however, that is a separate entity from and not a “d/b/a” of defendant Concentra, Inc.

4. Pursuant to Local Civil Rule 101(b), attached hereto as Exhibit A is a true and correct copy of the operative Complaint. The remainder of the record of the state court proceedings to date are submitted with the Verification of Records and Proceedings, filed concurrently herewith.

5. Pursuant to 28 U.S.C. §§ 1446(b), this Notice of Removal is filed within thirty (30) days after the first effected service on any defendant, which was the service on Auto Injury Solutions on July 12, 2013, and is therefore timely.

6. Pursuant to 28 U.S.C. §§ 1446(b)(2)(A), all defendants join in and consent to this notice of removal. A copy of the Notice of Removal will be filed in the King County Superior Court.

motions and arguments. By setting forth the bases of removal in this Notice, they in no way admit any of the allegations in the Complaint or that the allegations in the Complaint state any claim for which relief may be granted.

NOTICE OF REMOVAL BY DEFENDANTS CONCENTRA INC.,
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7. Venue lies in the United States District Court for the Western District of Washington at Seattle pursuant to 28 U.S.C. §§ 1441 and § 1391(a) because a substantial part of the events that Plaintiff alleges give rise to its claims occurred in this district and because the state court proceeding, Case No. 13-2-25923-1 SEA, was originally brought in King County Superior Court, which lies within the Western District of Washington.

DIVERSITY JURISDICTION

8. This Court has original jurisdiction of this action under 28 U.S.C. §§ 1332, because it is a civil action between citizens of different states where the matter in controversy, as alleged by Plaintiff, exceeds the sum or value of \$75,000, exclusive of interest and costs. *See* Complaint, ¶ 134 - 144 (seeking disgorgement and recovery of "\$200,000" based upon allegations of unjust enrichment, implicating a common and undivided interest deriving from payments for services allegedly made to defendants by Washington Automobile Insurers identified in the Complaint). Thus, this action is properly removed to this Court, pursuant to the provisions of 28 U.S.C. §§ 1441(a) & (b).

9. Plaintiff Body Recovery Clinic is a Washington limited liability company. In its Complaint, Plaintiff alleges that its principal place of business is in King County, Washington. *See* Complaint ¶1. The public records of the Washington Secretary of State, Corporations Division, reflect that the members of Plaintiff are Jaye Jacola and Jaye L. Jacola. Upon information and belief, and based on public records, Jaye Jacola and Jaye L. Jacola are the same person and a citizen of Washington.

10. Defendant Concentra, Inc. was, at the time of filing of this action, and still is, a Delaware corporation with its principal place of business in Texas. The Complaint erroneously alleges that Concentra, Inc., is a Massachusetts company. *See* Complaint ¶2. A copy of the

NOTICE OF REMOVAL BY DEFENDANTS CONCENTRA INC.,
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1 Delaware Division of Corporations Online Services report reflecting that Concentra, Inc., is a
2 Delaware corporation is attached hereto, as Exhibit B.

3 11. Defendant Auto Injury Solutions was, at the time of filing this action, and still
4 is, a Delaware corporation with its principal place of business in Colorado. The Complaint
5 erroneously alleges that Auto Injury Solutions is a Texas corporation with its principal place of
6 business in Texas. *See* Complaint ¶ 3. A copy of the Delaware Division of Corporations
7 Online Services report reflecting Auto Injury Solutions, Inc., as a Delaware corporation is
8 attached hereto as Exhibit C.

9 12. Accordingly, complete diversity exists between Plaintiff and all Defendants as
10 Plaintiff is a citizen of Washington, and Defendants are citizens of Delaware, Texas and
11 Colorado, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
12 This Court has original jurisdiction over this action and removal is proper.

INTRADISTRICT ASSIGNMENT

13. Pursuant to Local Civil Rules 101(e) and 3(d), removal to the Seattle Division
14 of the United States District Court for the Western District of Washington is appropriate
15 because the original state court venue lies in King County. Assignment to the Seattle division
16 is also appropriate because Plaintiff alleges that it maintains its principal place of business in
17 King County, Washington, and because a substantial part of the alleged events and alleged
18 damages that give rise to the alleged claims occurred in King County.
19

20 WHEREFORE the above captioned case, Case No. 13-2-25923-1 SEA, pending in
21 King County Superior Court is hereby removed to this Court pursuant to 28 U.S.C. §§ 1441,
22 and Defendants Concentra, Inc., and Auto Injury Solutions respectfully request that all further
23 proceedings in this action be conducted in this Court as provided by law.

NOTICE OF REMOVAL BY DEFENDANTS CONCENTRA INC.,
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DIVERSITY JURISDICTION - 4

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DATED this 1st day of August, 2013.

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s/ Mark S. Davidson, WSBA #06430
Mark S. Davidson, WSBA #06430
Attorneys for Defendants Concentra Inc., and
Auto Injury Solutions, Inc.
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DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that I electronically filed the foregoing document with the United States District Court, Western District of Washington electronic filing system, which will send notification of such filing to the following:

Attorneys for Plaintiff:

David Breskin
Roger Townsend
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In addition, this pleading has been delivered to a messenger service for delivery this date to the attorneys identified above.

DATED this 1st day of August, 2013.

s/Sue Riippa
Legal Assistant to Mark S. Davidson

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